



518288

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2009	.	
	.	
	.	
	.	

The Committee on Health Regulation (Bennett) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (4) of section 395.3025, Florida
Statutes, is amended to read:

395.3025 Patient and personnel records; copies;
examination.—

(4) Patient records are confidential and must not be
disclosed without the consent of the patient or his or her legal
representative ~~person to whom they pertain~~, but appropriate



518288

12 disclosure may be made without such consent to:

13 (a) Licensed facility personnel, ~~and~~ attending physicians,
14 or other health care practitioners and providers currently
15 involved in the care or treatment of the patient for use only in
16 connection with the treatment of the patient.

17 (b) Licensed facility personnel only for administrative
18 purposes or risk management and quality assurance functions.

19 (c) The agency, for purposes of health care cost
20 containment.

21 (d) In any civil or criminal action, unless otherwise
22 prohibited by law, upon the issuance of a subpoena from a court
23 of competent jurisdiction and proper notice by the party seeking
24 such records to the patient or his or her legal representative.

25 (e) The agency upon subpoena issued pursuant to s. 456.071,
26 but the records obtained thereby must be used solely for the
27 purpose of the agency and the appropriate professional board in
28 its investigation, prosecution, and appeal of disciplinary
29 proceedings. If the agency requests copies of the records, the
30 facility shall charge no more than its actual copying costs,
31 including reasonable staff time. The records must be sealed and
32 must not be available to the public pursuant to s. 119.07(1) or
33 any other statute providing access to records, nor may they be
34 available to the public as part of the record of investigation
35 for and prosecution in disciplinary proceedings made available
36 to the public by the agency or the appropriate regulatory board.
37 However, the agency must make available, upon written request by
38 a practitioner against whom probable cause has been found, any
39 such records that form the basis of the determination of
40 probable cause.



518288

41 (f) The Department of Health or its agent, for the purpose
42 of establishing and maintaining a trauma registry and for the
43 purpose of ensuring that hospitals and trauma centers are in
44 compliance with the standards and rules established under ss.
45 395.401, 395.4015, 395.4025, 395.404, 395.4045, and 395.405, and
46 for the purpose of monitoring patient outcome at hospitals and
47 trauma centers that provide trauma care services.

48 (g) The Department of Children and Family Services or its
49 agent, for the purpose of investigations of cases of abuse,
50 neglect, or exploitation of children or vulnerable adults.

51 (h) The State Long-Term Care Ombudsman Council and the
52 local long-term care ombudsman councils, with respect to the
53 records of a patient who has been admitted from a nursing home
54 or long-term care facility, when the councils are conducting an
55 investigation involving the patient as authorized under part II
56 of chapter 400, upon presentation of identification as a council
57 member by the person making the request. Disclosure under this
58 paragraph shall only be made after a competent patient or the
59 patient's representative has been advised that disclosure may be
60 made and the patient has not objected.

61 (i) A local trauma agency or a regional trauma agency that
62 performs quality assurance activities, or a panel or committee
63 assembled to assist a local trauma agency or a regional trauma
64 agency in performing quality assurance activities. Patient
65 records obtained under this paragraph are confidential and
66 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
67 Constitution.

68 (j) Organ procurement organizations, tissue banks, and eye
69 banks required to conduct death records reviews pursuant to s.



518288

70 395.2050.

71 (k) The Medicaid Fraud Control Unit in the Department of
72 Legal Affairs pursuant to s. 409.920.

73 (l) The Department of Financial Services, or an agent,
74 employee, or independent contractor of the department who is
75 auditing for unclaimed property pursuant to chapter 717.

76 (m) A regional poison control center for purposes of
77 treating a poison episode under evaluation, case management of
78 poison cases, or compliance with data collection and reporting
79 requirements of s. 395.1027 and the professional organization
80 that certifies poison control centers in accordance with federal
81 law.

82 Section 2. Section 408.051, Florida Statutes, is created to
83 read:

84 408.051 Florida Electronic Health Records Exchange Act.—

85 (1) SHORT TITLE.—This section may be cited as the "Florida
86 Electronic Health Records Exchange Act."

87 (2) DEFINITIONS.—As used in this section, the term:

88 (a) "Electronic health record" means a record of a person's
89 medical treatment which is created by a licensed health care
90 provider and stored in an interoperable and accessible digital
91 format.

92 (b) "Electronic health records system" means an application
93 environment consisting of at least two of the following
94 components: a clinical data repository, clinical decision
95 support, a controlled medical vocabulary, a computerized
96 provider order entry, a pharmacy, or clinical documentation. The
97 application must be used by health care practitioners to
98 document, monitor, and manage health care delivery within a



518288

99 health care delivery system and must be capable of
100 interoperability within a health information exchange.

101 (c) "Health information exchange" means an electronic
102 health records system used to acquire, process, and transmit
103 electronic health records that can be shared in real time among
104 authorized health care providers, health care facilities, health
105 insurers, and other recipients, as authorized by law, to
106 facilitate the provision of health care services.

107 (d) "Health record" means any information, recorded in any
108 form or medium, which relates to the past, present, or future
109 health of an individual for the primary purpose of providing
110 health care and health-related services.

111 (e) "Identifiable health record" means any health record
112 that identifies the patient or with respect to which there is a
113 reasonable basis to believe the information can be used to
114 identify the patient.

115 (f) "Patient" means an individual who has sought, is
116 seeking, is undergoing, or has undergone care or treatment in a
117 health care facility or by a health care provider.

118 (g) "Patient representative" means a parent of a minor
119 patient, a court-appointed guardian for the patient, a health
120 care surrogate, or a person holding a power of attorney or
121 notarized consent appropriately executed by the patient granting
122 permission to a health care facility or health care provider to
123 disclose the patient's health care information to that person.
124 In the case of a deceased patient, the term also means the
125 personal representative of the estate of the deceased patient;
126 the deceased patient's surviving spouse, surviving parent, or
127 surviving adult child; the parent or guardian of a surviving



518288

128 minor child of the deceased patient; or the attorney for any
129 such person.

130 (3) EMERGENCY RELEASE OF IDENTIFIABLE HEALTH RECORD.—A
131 health care provider may release or access an identifiable
132 health record of a patient without the patient's consent for use
133 in the treatment of the patient for an emergency medical
134 condition, as defined in s. 395.002(8), when the health care
135 provider is unable to obtain the patient's consent due to the
136 patient's condition or the nature of the situation requiring
137 immediate medical attention. A health care provider who in good
138 faith releases or accesses an identifiable health record of a
139 patient in any form or medium under this section is immune from
140 civil liability for accessing or releasing an identifiable
141 health record.

142 (4) UNIVERSAL PATIENT AUTHORIZATION FORM.—

143 (a) By July 1, 2010, the agency shall develop forms in both
144 paper and electronic formats which may be used by a health care
145 provider to document patient authorization for the use or
146 release, in any form or medium, of an identifiable health
147 record.

148 (b) The agency shall adopt by rule the authorization form
149 and accompanying instructions and make the authorization form
150 available on the agency's website, pursuant to s. 408.05.

151 (c) A health care provider receiving an authorization form
152 containing a request for the release of an identifiable health
153 record shall accept the form as a valid authorization to release
154 an identifiable health record. A health care provider may elect
155 to accept the authorization form in either electronic or paper
156 format or both. The individual or entity that submits the



518288

157 authorization form containing a request for the release of an
158 identifiable health record shall determine which format is
159 accepted by the health care provider prior to submitting the
160 form.

161 (d) An individual or entity that submits a request for an
162 identifiable health record is not required under this section to
163 use the authorization form adopted and distributed by the
164 agency.

165 (e) The exchange by a health care provider of an
166 identifiable health record upon receipt of an authorization form
167 completed and submitted in accordance with agency instructions
168 creates a rebuttable presumption that the release of the
169 identifiable health record was appropriate. A health care
170 provider that releases an identifiable health record in reliance
171 on the information provided to the health care provider on a
172 properly completed authorization form does not violate any right
173 of confidentiality and is immune from liability under this
174 section.

175 (f) A health care provider that exchanges an identifiable
176 health record upon receipt of an authorization form shall not be
177 deemed to have violated or waived any privilege protected under
178 the statutory or common law of this state.

179 (5) PENALTIES.—A person who does any of the following may
180 be liable to the patient or a health care provider that has
181 released an identifiable health record in reliance on an
182 authorization form presented to the health care provider by the
183 person for compensatory damages caused by an unauthorized
184 release, plus reasonable attorney's fees and costs:

185 (a) Forges a signature on an authorization form or



518288

186 materially alters the authorization form of another person
187 without the person's authorization; or

188 (b) Obtains an authorization form or an identifiable health
189 record of another person under false pretenses.

190 Section 3. Section 408.0512, Florida Statutes, is created
191 to read:

192 408.0512 Electronic medical records system adoption loan
193 program.—

194 (1) Subject to a specific appropriation, the agency shall
195 operate an electronic medical records system adoption loan
196 program for the purpose of providing a one-time, no-interest
197 loan to eligible physicians licensed under chapter 458 or
198 chapter 459 or to an eligible business entity whose shareholders
199 are licensed under chapter 458 or chapter 459 for the initial
200 costs of implementing an electronic medical records system.

201 (2) In order to be eligible for a loan under this section,
202 each physician must demonstrate that he or she has practiced
203 continuously within the state for the previous 3 years.

204 (3) The agency may not provide a loan to a physician who
205 has or a business entity whose physician has:

206 (a) Been found guilty of a violation of s. 456.072(1) or
207 been disciplined under the applicable licensing chapter in the
208 previous 5 years.

209 (b) Been found guilty of or entered a plea of guilty or
210 nolo contendere to a violation of s. 409.920 or s. 409.9201.

211 (c) Been sanctioned pursuant to s. 409.913 for fraud or
212 abuse.

213 (4) A loan may be provided to an eligible physician or
214 business entity in a lump-sum amount to pay for the costs of



518288

215 purchasing hardware and software, subscription services,
216 professional consultation, and staff training. The agency shall
217 provide guidance to loan recipients by providing, at a minimum,
218 a list of electronic medical records systems recognized or
219 certified by national standards-setting entities as capable of
220 being used to communicate with a health information exchange.

221 (5) The agency shall distribute a minimum of 25 percent of
222 funds appropriated to this program to physicians or business
223 entities operating within a rural county as defined in s.
224 288.106(1)(r).

225 (6) The agency shall, by rule, develop standard terms and
226 conditions for use in the loan program. At a minimum, these
227 terms and conditions shall require:

228 (a) Loan repayment by the physician or business entity
229 within a reasonable period of time, which may not be longer than
230 72 months after the funding of the loan.

231 (b) Equal periodic payments that commence within 3 months
232 after the funding of the loan.

233 (c) The eligible physician or business entity to execute a
234 promissory note and a security agreement in favor of the state.
235 The security agreement shall be a purchase-money security
236 interest pledging as collateral for the loan the specific
237 hardware and software purchased with the loan proceeds. The
238 agency shall prepare and record a financing statement under
239 chapter 679. The physician or business entity shall be
240 responsible for paying the cost of recording the financing
241 statement. The security agreement shall further require that the
242 physician or business entity pay all collection costs, including
243 attorney's fees.



518288

244 (7) The agency shall further require the physician or
245 business entity to provide additional security under one of the
246 following paragraphs:

247 (a) An irrevocable letter of credit, as defined in chapter
248 675, in an amount equal to the amount of the loan.

249 (b) An escrow account consisting of cash or assets eligible
250 for deposit in accordance with s. 625.52 in an amount equal to
251 the amount of the loan. If the escrow agent is responsible for
252 making the periodic payments on the loan, the required escrow
253 balance may be diminished as payments are made.

254 (c) A pledge of the accounts receivable of the physician or
255 business entity. This pledge shall be reflected on the financing
256 statement.

257 (8) All payments received from or on behalf of a physician
258 or business entity under this program shall be deposited into
259 the agency's Administrative Trust Fund to be used to fund new
260 loans.

261 (9) If a physician or business entity that has received a
262 loan under this section ceases to provide care or services to
263 patients, or if the physician or business entity defaults in any
264 payment and the default continues for 30 days, the entire loan
265 balance shall be immediately due and payable and shall bear
266 interest from that point forward at the rate of 18 percent
267 annually. Upon default, the agency may offset any moneys owed to
268 the physician or business entity from the state and apply the
269 offset against the outstanding balance.

270 (10) If a physician defaults in any payment and if the
271 default continues for 30 days, the default constitutes grounds
272 for disciplinary action under chapter 458 or chapter 459 and



518288

273 under s. 456.072(1)(k).

274 Section 4. Subsection (2) of section 483.181, Florida
275 Statutes, is amended to read:

276 483.181 Acceptance, collection, identification, and
277 examination of specimens.—

278 (2) The results of a test must be reported directly to the
279 licensed practitioner or other authorized person who requested
280 it, and appropriate disclosure may be made by the clinical
281 laboratory without a patient's consent to other health care
282 practitioners and providers involved in the care or treatment of
283 the patient as specified in s. 456.057(7)(a). The report must
284 include the name and address of the clinical laboratory in which
285 the test was actually performed, unless the test was performed
286 in a hospital laboratory and the report becomes an integral part
287 of the hospital record.

288 Section 5. This act shall take effect upon becoming a law.

289

290 ===== T I T L E A M E N D M E N T =====

291 And the title is amended as follows:

292 Delete everything before the enacting clause
293 and insert:

294 A bill to be entitled
295 An act relating to electronic health records; amending
296 s. 395.3025, F.S.; expanding access to a patient's
297 health records in order to facilitate the exchange of
298 data between certain health care facility personnel,
299 practitioners, and providers and attending physicians;
300 creating s. 408.051, F.S.; creating the "Florida
301 Electronic Health Records Exchange Act"; providing



518288

302 definitions; authorizing the release of certain health
303 records under emergency medical conditions without
304 patient consent; providing for immunity from civil
305 liability; providing duties of the Agency for Health
306 Care Administration with regard to the availability of
307 specified information on the agency's Internet
308 website; requiring the agency to develop and implement
309 a universal patient authorization form in paper and
310 electronic formats for the release of certain health
311 records; providing procedures for use of the form;
312 providing penalties; providing for certain
313 compensation and attorney's fees and costs; creating
314 s. 408.0512, F.S.; requiring the Agency for Health
315 Care Administration to operate an electronic medical
316 records system adoption loan program, subject to
317 specific appropriation; providing eligibility
318 criteria; prohibiting the agency from providing loans
319 to physicians or businesses that have violated certain
320 provisions of law; providing for uses of the loan;
321 providing guidelines for distribution of funds by the
322 agency; requiring the agency to develop terms and
323 conditions for the loan program; requiring physicians
324 and businesses to provide additional security
325 agreements under certain circumstances; providing for
326 payments to be deposited in the agency's
327 Administrative Trust Fund; establishing procedures for
328 managing cases of default; amending s. 483.181, F.S.;
329 expanding access to laboratory reports in order to
330 facilitate the exchange of data between certain health



518288

331 care practitioners and providers; providing an
332 effective date.

333

334 WHEREAS, the use of electronic health information
335 technology has been proven to benefit consumers by increasing
336 the quality and efficiency of health care delivery throughout
337 the state, and

338 WHEREAS, clear and concise standards for sharing privacy-
339 protected medical information among authorized health care
340 providers will enable providers to have cost-effective access to
341 the medical information needed to make sound decisions about
342 health care, and

343 WHEREAS, maintaining the privacy and security of
344 identifiable health records is essential to the adoption of
345 procedures for sharing of electronic health records among health
346 care providers involved in the treatment of patients, NOW,
347 THEREFORE,